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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 JEFFREY DEPENBROCK,

6 v. Plaintiff,

Case No. 3:20-cv-00492-ART-CSD

7 PARKE, *et al.*,

8 Defendants.

ORDER

9 *Pro se* Plaintiff Jeffrey Depenbrock brings this action under 42 U.S.C.
10 § 1983 against four defendants: Papke, Peterman, Wickham, and Baca. Before
11 the Court are: (1) the Report and Recommendation (“R&R” or “Recommendation”)
12 of United States Magistrate Judge Craig S. Denney (ECF No. 35), recommending
13 that Plaintiff’s motion to substitute Defendant Papke with his successor “Mr. Sui”
14 be denied and that Defendant Peterman be dismissed pursuant to Fed. R. Civ. P.
15 4(m); and (2) the R&R of Judge Denney (ECF No. 45) recommending that
16 Defendants Wickham and Baca’s motion for summary judgment be granted.
17 Plaintiff had until December 12, 2022 to file an objection to the first R&R and
18 until May 16, 2023 to file an objection to the second. To date, no objection to
19 either R&R has been filed. For this reason, and as explained below, the Court
20 adopts the R&R’s and will dismiss Defendants Papke and Peterman and grant
21 Defendants Wickham and Baca’s motion for summary judgment, closing this
22 case.

23 The Court “may accept, reject, or modify, in whole or in part, the findings
24 or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where
25 a party fails to object to a magistrate judge’s recommendation, the Court is not
26 required to conduct “any review at all . . . of any issue that is not the subject of
27 an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); see also *United States v.*

1 *Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the
 2 magistrate judges’ findings and recommendations is required if, but *only* if, one
 3 or both parties file objections to the findings and recommendations.”) (emphasis
 4 in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that
 5 the Court “need only satisfy itself that there is no clear error on the face of the
 6 record in order to accept the recommendation.”).

7 Because there are no objections, the Court need not conduct de novo
 8 review, and is satisfied Judge Denney did not clearly err. In the first R&R, Judge
 9 Denney recommends denial of Plaintiff’s motion to substitute Defendant Papke
 10 and dismissal of Defendants Papke and Peterman from this case. (ECF No. 35 at
 11 5.) On May 10, 2022, a suggestion of death upon the record was filed regarding
 12 Defendant Papke. (ECF No. 24.) Plaintiff’s motion for substitution seeks to
 13 substitute “Mr. Sui,” who is allegedly an investigator and Defendant Papke’s
 14 successor, which Defendants opposed on the basis that there is no “Mr. Sui”
 15 working for NDOC; while there is a Robert Suwe working as an institutional
 16 investigator, there is no evidence that he is the successor to Defendant
 17 Correctional Officer Papke. Judge Denney recommends dismissal with prejudice
 18 of Defendant Papke in his official capacity since a prison correctional officer is
 19 not a “public officer” for the purposes of Fed. R. Civ. P. 25(d), and Judge Denney
 20 recommends dismissal without prejudice of Defendant Papke in his individual
 21 capacity. Regarding Defendant Peterman, Judge Denney recommends dismissal
 22 without prejudice under Fed. R. Civ. P. 4(m) because no proof of service has been
 23 filed for Defendant Peterman and there is no apparent good cause for further
 24 extension. The Court agrees with Judge Denney. Having reviewed the R&R and
 25 the record in this case, the Court will adopt the R&R in full.

26 In the second R&R, Judge Denney recommends granting Defendants
 27 Wickham and Baca’s motion for summary judgment, which would terminate this
 28 case since no defendants would remain. (ECF No. 45 at 11.) This case involves

1 the alleged improper disclosure of Plaintiff's medical condition in the course of an
2 investigation following Plaintiff's taking a drug test which showed a result of low
3 creatine, which can indicate dilution of the sample. The R&R explains that the
4 disclosure of this information in an investigative report and notice of charges falls
5 within legitimate penological interests, that Defendants Wickham and Baca did
6 not personally request or author the investigative report and notice of charges,
7 and that qualified immunity is appropriate since Plaintiff's alleged constitutional
8 right to privacy in this situation is not clearly established. The Court agrees with
9 Judge Denney. Having reviewed the R&R and the record in this case, the Court
10 will adopt the R&R in full.

11 It is therefore ordered that Judge Denney's Report and Recommendation
12 (ECF No. 35) is accepted and adopted in full. Plaintiff's motion to substitute party
13 (ECF No. 30) is denied. Defendant Papke is dismissed from this case with
14 prejudice with respect to his official capacity and dismissed without prejudice
15 with respect to his individual capacity. Defendant Peterman is dismissed from
16 this case without prejudice.

17 It is further ordered that Judge Denney's Report and Recommendation
18 (ECF No. 45) is accepted and adopted in full. Defendants Wickham and Baca's
19 motion for summary judgment (ECF No. 36) is granted.

20 The Clerk of Court is directed to administratively close this case.
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22 DATED THIS 16th day of June 2023.
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26 ANNE R. TRAUM
27 UNITED STATES DISTRICT JUDGE
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